

AO 91 (Rev. 08/09) Criminal Complaint

## UNITED STATES DISTRICT COURT

for the  
Western District of TexasUnited States of America  
v.  
Aurelia HERNANDEZ

Case No.

A-11-M-58

FILED  
2011 JAN 26 PM 4:08  
CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXASBY AF  
DEPUTY

Defendant(s)

## CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of Oct. 1, 2010 to Jan. 25, 2011 in the county of Travis, Hays, Williamson, in the  
Western District of Texas, the defendant(s) violated:

## Code Section

Title 18 USC, 2, 371, 922(g)(1),  
922(a)(6), 924(a)(1)(A), 554

## Offense Description

Aiding and abetting and conspiracy to committ offenses  
against the United States as to false statements in the acquisition of firearms  
from a licensed firearms dealer and causing false information in the records  
required to be kept by a licensed firearms dealer and smuggling goods out of  
the United States.

This criminal complaint is based on these facts:

SEE ATTACHED AFFIDAVIT

☒ Continued on the attached sheet.Daniel L. Jones

Complainant's signature

Daniel L. Jones, Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date:

1/24/11Robert Pitman

Judge's signature

City and state:

Austin, TXRobert Pitman, U.S. Magistrate Judge

Printed name and title

## AFFIDAVIT

The affiant, Daniel L. Jones, being duly sworn, deposes and states the following:

1. That the affiant has been a Federal agent for over 21 years. That the affiant has been employed with the Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) as a Special Agent, since July of 1990. Prior to July of 1990, the affiant was a Special Agent with the United States Department of Labor. That the affiant, as an ATF Special Agent, is empowered to make arrests, conduct investigations, and execute search and arrest warrants relative to Federal firearms offenses pursuant to Title 18 and Title 26 of the United States Code.
2. That the affiant has been involved in hundreds of investigations involving Federal firearms violations, both as a street agent and as a supervisory agent. That these investigations have resulted in the arrest of numerous criminal defendants and the seizure of several hundred firearms.
3. That the affiant has personal knowledge of the facts herein set forth with the exception of the matters expressly stated to be based upon information and belief of others.
4. That this affidavit sets forth facts that establish probable cause to arrest Aurelia HERNANDEZ for the commission of violations of Title 18, United States Code, Sections 2, 371, 922(g)(1), 922(a)(6), 924(a)(1)(A) and 554
5. That the affiant is currently conducting an investigation involving alleged violations of Federal laws by Jose LIRA, DOB: 9/29/1976, Aurelia HERNANDEZ, DOB: 10/1/1955, Nicholas TOVAR, DOB: 12/24/1989, and over a dozen alleged co-conspirators who have utilized "straw purchasers" to acquire high capacity assault style firearms, which are being smuggled into Mexico. Based on the investigation of these subjects the affiant has determined through surveillance, interviews, and intelligence resources that Aurelia HERNANDEZ and Nicholas TOVAR are residing at 2304 Deadwood Drive, Austin, Texas 78744 and they have utilized the GMC pickup and Nissan Altima in furtherance of the alleged crimes.
6. Pursuant to this investigation the affiant has learned that Aurelia HERNANDEZ is Jose LIRA'S mother and that Nicholas TOVAR is LIRA'S nephew.
7. That the affiant has obtained computerized criminal history records and court records which establish that Jose LIRA is a convicted felon. LIRA, based on

his own admissions to the affiant on January 25, 2011 stated that he is currently on probation out of Hays County Texas for a felony drug offense. The affiant has also confirmed that LIRA has a felony conviction out of Williamson County and a Federal felony conviction for alien smuggling charges. LIRA admitted to the affiant that he did prison time at the Bastrop F.C.I. related to the Federal conviction.

8. That the affiant has obtained computerized criminal history records that establish that Aurelia HERNANDEZ is also a convicted felon. She has been convicted of felony bribery in Florida, two (2) felony theft of property cases in Texas and felony alien smuggling in Texas (Federal court).
9. That several weeks ago the affiant received information from a licensed firearms dealer in Killeen, Texas, doing business as Guns Galore. It was learned from store personnel that they suspected at least two (2) Hispanic females had recently purchased assault style firearms from the store and that the purchases seemed suspicious and may have been "straw purchases."
10. The affiant knows that "straw purchasing" firearms involves one subject filling out firearms transaction forms to acquire firearms from a Federally licensed firearms dealer for another subject/s who either cannot pass the background check to purchase firearms or is a person/s involved in illegal activity who does not wish to place their name/s on the transaction forms. The "straw purchaser" must provide a false statement on the transaction forms by stating that they are the actual purchaser of the firearm/s when in fact they are not and they are just filling out the forms for someone else who has provided them the money to buy the guns and who usually takes possession of the firearms from the "straw purchaser" almost immediately after the guns are obtained. This is a violation of Title 18 U.S.C., Sections 922(a)(6), 924(a)(1)(A) and aiding, abetting, and/or conspiring to commit said offenses in violation of Title 18 U.S.C., Sections 2 and 371.
11. That in response to the information received from Guns Galore, the affiant and other ATF Agents initiated an investigation of the alleged "straw purchasers." As a result, to date ATF has received confessions from five (5) female subjects who admitted to "straw purchasing" firearms. These subjects are Krystal AYALA, Monica PASTOR, Anna PEREZ, Elva HERNANDES and Jordan MCCOY.
12. Collectively the "straw purchasers" have purchased numerous firearms, which are exclusively assault style "AR15" and "AK47" style firearms, which are the firearms most commonly smuggled into Mexico and supplied to drug cartels. The firearms have been purchased not just from Guns Galore, but from several other Austin area Federally licensed firearms dealers, including dealers at Austin area gun shows.

13. All five (5) of the "straw purchasers" have told the affiant and/or other ATF Agents that they were paid a sum of money, usually \$100.00 per gun, to falsify the forms at the gun stores by answering "yes" on the form in reference to the question which asks if they are the actual purchaser. All five (5) of the "straw purchasers" independently identified Jose LIRA as the subject for whom they "straw purchased" the firearms. LIRA'S half-brother Pedro TOVAR and LIRA'S nephew Nicholas TOVAR were also implicated as directing at least some of the "straw purchases" by these five (5) subjects and at times working in concert with LIRA and Aurelia HERNANDEZ.
14. Specific to LIRA, all five (5) "straw purchasers" stated that they had made firearms purchases using funds given to them by LIRA. In most cases LIRA drove them to the gun stores and even at times went into the gun store to keep an eye on the "straw purchasers." After the purchases were made the guns were turned over to LIRA.
15. That on January 25, 2011, Jose LIRA travelled with "straw purchaser" Elva HERNANDES to the Guns Galore store in Killeen. After the purchase LIRA was apprehended by ATF Agents in Austin, Texas at a storage unit off of Lamar Blvd. Three (3) "AK47" style firearms "straw purchased" by HERNANDES for LIRA on this date were seized by ATF from LIRA'S possession. A written consent search of a storage unit controlled by LIRA led to the seizure of an "AR15" style firearm and numerous empty gun cases/boxes for firearms alleged to have already been smuggled to Mexico by LIRA and Aurelia HERNANDEZ. Additionally, firearms accessories, ammunition, and approximately \$5,000 U.S. Currency and approximately 2 pounds of suspected marijuana were seized by ATF.
16. The affiant interviewed Elva HERNANDES, who after being advised of her rights per Miranda and waiving said rights, readily admitted to the affiant that she just "straw purchased" the three (3) firearms seized from LIRA'S possession. She admitted to making prior "straw purchases" for Pedro TOVAR and indicated that Aurelia HERNANDEZ may be involved.
17. Upon being interviewed by the affiant on January 25, 2011, Jordan MCCOY, provided the affiant numerous details of the conspiracy. MCCOY stated that she is Jose LIRA'S girlfriend and that they have resided together at 600 Barwood Park, Unit 1626 in Austin, Texas. She stated that around the end of October or early November 2010 she started "straw purchasing" firearms for LIRA using funds they received from a source in Mexico. She stated that LIRA then transferred the firearms to his mother, Aurelia HERNANDEZ who would hide the firearms in her vehicle, described as a white extended cab pickup truck and then drive the guns into Mexico. She explained that the guns were broken down and wrapped in grey carpet and placed inside the pickup truck. She said that Aurelia HERNANDEZ would usually have numerous dogs in the truck with her to help conceal the guns and deter a search. She

said that sometimes HERNANDEZ came to the Barwood Park address to get the guns from LIRA and sometimes he delivered the guns to her at her residence.

18. MCCOY told the affiant that Aurelia HERNANDEZ was the person who initiated the conspiracy to smuggle firearms into Mexico and that HERNANDEZ, who lives in Mexico when she is not in Austin, made the contacts in Mexico to obtain the money to buy the guns and to whom the guns were/are delivered.
19. The affiant has determined through surveillance that the white pickup truck driven by HERNANDEZ is a 1999 GMC, TXLP# AR02510. This vehicle has been seen by the affiant, or other ATF agents, on multiple occasions parked at 2304 Deadwood, Austin, TX.
20. MCCOY admitted to the affiant that on three (3) occasions she participated in smuggling U.S. currency into the United States from Mexico. She stated the money was to be used to purchase the firearms. The most recent occasion was on January 19, 2011. She said that on this date, she, Scott DAVIS and Tracey CASTILLO, who are addition alleged "straw purchasers" concealed a total of \$7,000 on their persons and then walked back into the United States near Eagle Pass, TX. According to border authority records all three (3) subjects were listed as having crossed into the United States on this date at approximately 2:00 p.m. MCCOY also stated that she was with HERNANDEZ on December 4, 2010 when HERNANDEZ was driving the GMC pickup into the United States from Mexico and border authorities seized over \$11,000 of undeclared money from HERNANDEZ. MCCOY stated that these funds were money obtained from the recipient of the firearms in Mexico and the money was intended to purchase additional firearms to be smuggled into Mexico. MCCOY said that the source of the money in Mexico, who is also the receiver of the firearms, is a Hispanic male named Charlie who drives a white in color, 4 door, Chevy Trail Blazer.
21. MCCOY identified approximately ten (10) persons who "straw purchased" firearms for her, LIRA and HERNANDEZ. All of the subjects she named are persons that were pre-identified by ATF as potential co-conspirators.
22. MCCOY stated that HERNANDEZ lives at a residence off of Stassney on the south side of Austin. The affiant knows that the address, 2304 Deadwood is located just north of Stassney. MCCOY'S description of the house matches the description of the house at 2304 Deadwood. MCCOY stated that Nicholas TOVAR and his girlfriend are currently living at this address with HERNANDEZ. The affiant knows that Nicholas TOVAR'S girlfriend is Lydia CASTANEDA, another alleged coconspirator and "straw purchaser."


23. That on January 14, 2011, the affiant, and other ATF agents conducted surveillance at The Gun Store in Cedar Park, Texas. The owner, who had been alerted to the gun trafficking conspiracy and who had sold guns to alleged "straw purchasers" contacted ATF and stated that he had received a call from Nicholas TOVAR and that the caller ID in the store indicated the call was coming from number 512-662-4665 in the name of Aurelia HERNANDEZ. TOVAR inquired about the availability of an "AK47" style firearm and indicated that he was on his way to the store. TOVAR was observed arriving at the store in a 2005 Nissan Altima, white in color, TXLP# BX7N985. This vehicle is registered to Nicholas TOVAR at a prior address he used to live at.
24. Nicholas TOVAR proceeded to purchase an "AK47" style firearm from the store. He was then followed by the affiant and other ATF Agents to 2304 Deadwood, Austin, Texas. The affiant and other ATF Agents have seen TOVAR'S Nissan parked in the driveway on the street out front of this address on several occasions since this date and as recently as January 26, 2011.
25. It was learned from surveillance of TOVAR inside The Gun Store on January 14, 2011 that he initially tried to buy a pistol version of an "AK47" firearm, but the purchase was denied because TOVAR is 20 years old and you must be 21 or older to buy a pistol from a licensed firearms dealer. TOVAR bought an "AK47" rifle instead. However, the very next day, the affiant was contacted by the owner of The Gun Store and he stated that a subject identified as Justin CAUDLE had called the store and the caller ID showed the call coming from Aurelia HERNANDEZ phone number 512-662-4665, the same phone number from which TOVAR called the prior day. CAUDLE stated that he wanted to come to the store and buy an "AK47" pistol. The affiant observed this subject come to the store and when he attempted to purchase the firearm The Gun Store owner was instructed by the affiant to delay the transaction. CAUDLE did not take receipt of the gun. The affiant also learned that on this same weekend Nicholas TOVAR contacted another licensed firearms dealer in Round Rock, Texas and he was inquiring about purchasing "AK47" pistols from this gun dealer.
26. That when the affiant interviewed "straw purchasers" Monica PASTOR and Anna PEREZ, they both indicated that Nicholas TOVAR participated in their purchases by following them to the guns store/s and even went in the store/s to point out to them which guns to buy. At this time TOVAR was working in concert with LIRA. Upon being interviewed by the affiant on January 25, 2011 LIRA said that TOVAR has been attempting to "straw purchase" firearms independent of LIRA so he can make more of a profit.
27. That ATF Agent Kristi McPartlin discovered an APD report generated on November 10, 2010 (Austin Police Department General Offense # 2010-

5059987) relative to Jose LIRA and Aurelia HERNANDEZ. This report was called in by a female by the name of Isela Esmeralda GUARDARDO, W/F, DOB- 05/05/1974. GUARDARDO told officers from Austin Police Department that her ex-boyfriend, Jose LIRA, was threatening her.

28. GUARDARDO told Austin Police officers that LIRA was a member of the "Tango Blast" gang. She also said that LIRA is involved in a lot of illegal activity. GUARDARDO said LIRA was involved with illegal alien smuggling along with his mother (Aurelia HERNANDEZ), and also was transporting firearms into Mexico. GUARDARDO also claimed that LIRA had told her that if he ever got arrested and found out that she had anything to do with it he would make her and her family pay.
29. GUARDARDO continued to tell Austin Police officers that LIRA would gather firearms and give them to his mother, Aurelia HERNANDEZ. According to GUARDARDO, HERNANDEZ would take the firearms into Mexico to sell.
30. This investigation has also identified GUARDARDO as an alleged "straw purchaser" of firearms for LIRA/HERNANDEZ.
31. That on January 25, 2011, the affiant and ATF Agent Kristi McPartlin interviewed Jose LIRA. After being advised of his rights per Miranda, LIRA agreed to speak to ATF. LIRA admitted to obtaining firearms, using "straw purchasers", and conspiring with others to smuggle firearms into Mexico. He said that he could not take the guns into Mexico himself because he is a felon on probation. He said that initially the guns he bought were obtained by private sellers he found on the internet and then he later started using others to acquire the guns for him. He said that he would pay the "straw purchasers" a fee of up to \$300.00 per each gun they bought for him. LIRA was reluctant to provide names of the persons he conspired with. LIRA often times just nodded in the affirmative when asked if specific people conspired with him. LIRA nodded in the affirmative when asked if his mother was involved. LIRA stated that originally Pedro TOVAR, his half brother and Nicholas TOVAR, his nephew were involved in the conspiracy. He said that Pedro stole money from him that was intended to be used to buy guns and this led to them having a falling out. He said that Nicholas stopped working with him and tried to start buying the guns on his own or through others directly linked to him.
32. Pursuant to the interview of LIRA, he advised the affiant that he utilized the internet to search for gun dealers and that he frequented the web site, [www.TexasGunTraders.com](http://www.TexasGunTraders.com) to identify private sellers of firearms or licensed firearms dealers that had for sale firearms LIRA and his co-conspirators wished to purchase.

33. That the affiant received documents showing the history of recorded crossing between Mexico and the United States for Aurelia HERNANDEZ and for the GMC truck known to be driven by here. These records indicate that HERNANDEZ has crossed the Mexico/U.S. border no less than 14 times between October 28, 2010 and January 23, 2011. These records indicate that the GMC truck has crossed the Mexico/U.S. border no less than 23 times between July 8, 2010 and January 23, 2011.
34. That the affiant is a qualified expert in the date and place of manufacture of firearms and that the affiant knows that the "AK47" firearms and "AR15" firearms being purchased by the conspirators in this case are firearms not manufactured in the State of Texas and therefore would have to have an effect on interstate and or foreign commerce in order to be possessed in Texas.
35. That based on the above facts the affiant believes that probable cause exists to arrest Aurelia HERNANDEZ for violations of Title 18 U.S.C., Sections 2, 371, 922(g)(1), 922(a)(6), 924(a)(1)(A) and 554

I, the affiant, Daniel L. Jones, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

  
Daniel L. Jones  
Special Agent

Sworn and subscribed to me on this 26<sup>th</sup> day of January 26, 2011.

  
United States Magistrate Judge